

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Notice of Intended Action

**Proposing rule making related to waivers
and providing an opportunity for public comment**

The Iowa Department of Veterans Affairs hereby proposes to amend Chapter 4, “Agency Procedure for Rule Making,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 35A.5(12).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A and 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendment updates rule 801—4.15(17A,35D) in accordance with changes to Iowa Code section 17A.9A as required by 2020 Iowa Acts, House File 2389, section 10. The legislation called for the deletion of the word “variance” when the word is used in relation to “waiver.”

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 22, 2021. Comments should be directed to:

Melissa Miller
Iowa Department of Veterans Affairs
Camp Dodge, Bldg. #3465
7105 NW 70th Avenue
Johnston, Iowa 50131
Email: melissa.miller2@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 801—4.15(17A,35D) as follows:

801—4.15(17A,35D) Procedures for granting waivers.

4.15(1) Any person may file a petition with the commission of veterans affairs requesting a waiver ~~or variance~~, in whole or in part, of a commission rule on the grounds that the application of the rule to the particular circumstances of that person justifies a waiver under this uniform waiver rule. The commission chairperson shall receive written petitions.

4.15(2) A petition for a waiver ~~or variance~~ shall include the following information where applicable and known to the person requesting the waiver ~~or variance~~:

- a. The name, address, and case number or state identification number of the entity or person for whom a waiver ~~or variance~~ is requested.
- b. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.
- c. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.
- d. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.
- e. A history of the commission's action relative to the petitioner.
- f. Any information regarding the commission's treatment of similar cases, if known.
- g. The name, address, and telephone number of any person inside or outside state government who would be adversely affected by the granting of the petition or who otherwise possesses knowledge of the matter with respect to the waiver ~~or variance~~ request.
- h. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver ~~or variance~~.

4.15(3) The procedural guidelines stated under the Iowa Administrative Procedure Act, Iowa Code chapter 17A, shall govern the form, filing, timing and contents of petitions for the waivers of rules and the procedural rights of persons in relation to such petitions.

4.15(4) The commission shall acknowledge a petition upon receipt. The petitioner shall serve notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been served.

4.15(5) Prior to issuing an order granting or denying a waiver ~~or variance~~ request, the commission may request additional information from the petitioner relative to the application and surrounding circumstances.

4.15(6) An order granting or denying a request for waiver ~~or variance~~ shall be in writing and contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which that action is based, and a description of the precise scope and operative period of the waiver ~~or variance~~ if one is issued. The commission shall grant or deny a petition for the waiver ~~or variance~~ of all or a portion of a rule as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a waiver petition has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the commission to grant

or deny such a petition within the required time period shall be deemed a denial of that petition by the commission.

4.15(7) Within seven days of its issuance, any order issued under the uniform waiver rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

4.15(8) Subject to the provisions of Iowa Code section 17A.3(1) “e,” the commission shall maintain a record of all orders granting and denying requests for waivers ~~or variances~~ under this uniform waiver rule. The records shall be indexed by rule and available for public inspection.

4.15(9) ~~Semiannually, the commission shall prepare a report identifying~~ Within 60 days of granting or denying a waiver, the commission shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver ~~or variance~~ has been granted or denied, the number of times a waiver ~~or variance~~ was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, a general summary of the reasons justifying the commission’s actions on the waiver ~~or variance~~ requests and, to the extent practicable, detailing the extent to which the granting of a waiver ~~or variance~~ has affected the general applicability of the rule itself and established a precedent for additional waivers ~~or variances~~. ~~Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

4.15(10) The provisions of rules 801—4.14(17A,35D) and 801—4.15(17A,35D) shall not apply to rules that define the meaning of a statute or other provisions of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition and do not authorize the commission to waive any requirement created or duty imposed by statute.

4.15(11) After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is invoked.